

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SB:5:PNX:GL-122045-00
AMWelhaf

date: **DEC - 1 2000**

to: Assistant Chief Counsel (Collection, Bankruptcy and Summons)
Attention: Alan C. Levine, Chief, Branch 1 CC:PA:CBS

from: Office of Chief Counsel, (SBSE), Area 5, Phoenix

subject: **Request for Advice**
Statute of Limitations on Tax Lien Reduced to Judgment

This is to request your advice on the matter described herein. This question originated from our local Compliance Technical Support Group in Phoenix. To assist you in answering this question, we are attaching their memorandum to us dated October 24, 2000, along with attachments 1 through 4 made a part thereof.

ISSUE

Where the United States timely brought suit to foreclose its tax lien, and the judgment was entered in [REDACTED], whether that judgment falls outside the provisions of 28 U.S.C. § 3201(c) such that there is no statute of limitations as to that judgment and the tax may be collected in perpetuity.

TENTATIVE CONCLUSION

It appears that technically there is no statute of limitations on a judgment obtained by the United States if the judgment does not fall within the provisions of 28 U.S.C. § 3201(c). However, we believe the Service needs to make a policy determination regarding whether to take this position and continue collecting currently on such antiquated judgments that may still exist.

FACTS

The Service obtained a judgment against taxpayer in the approximate amount of \$[REDACTED] relating to a section 6672 refund litigation case. The judgment was entered by the United States District Court for the District of Arizona on [REDACTED] (attachment 1). The United States properly recorded its judgment. Much of the judgment remains unsatisfied today, and

the Service continues to offset taxpayer's tax refunds to satisfy this judgment.¹ Collection is taking the position that there is no statute of limitation on the judgment at issue and that 28 U.S.C. § 3201(c), which sets forth a 20-year duration for judgments obtained by the United States (with one 20-year renewal), is inapplicable.

LAW

Congress enacted the Federal Debt Collection Procedure Act (FDCPA) in 1990. 28 U.S.C. §§ 3001, et. seq. These provisions provide the civil procedures for the United States to obtain a judgment on a debt. As pertinent, 28 U.S.C. § 3201(c) provides:

(c) Duration of lien; renewal.

(1) Except as provided in paragraph (2), a lien created under subsection (a) is effective, unless satisfied, for a period of 20 years.

(2) Such lien may be renewed for one additional period of 20 years upon filing a notice of renewal in the same manner as the judgment is filed and shall relate back to the date the judgment is filed if-

(A) the notice of renewal is filed before the expiration of the 20-year period to prevent the expiration of the lien; and

(B) the court approves the renewal of such lien under this paragraph.


This section clearly imposes a 20-year limitation period on a judgment obtained by the United States, subject to one renewal of this period. According to 28 U.S.C. § 3005, the provisions of the FDCPA "shall not apply with respect to a judgment on a debt if such judgment is entered more than 10 years before the effective date" of the FDCPA. The FDCPA was effective 180 days after November 29, 1990, or effective on May 29, 1991. Thus, any judgment entered 10 years prior to that date, or before May 29, 1981, would not be subject to the provisions of the FDCPA.

¹ As you are aware, the Service may pursue administrative collection of "judgments" entered by a court for so long as the judgment is still valid and enforceable. I.R.C. § 6502. According to the memorandum dated February 8, 1989 (attachment 2), section 6502 is applicable regardless of when the judgment was entered.

We have not located any statutory provision that existed in the law prior to the enactment of the FDCPA which imposed a statute of limitations or duration on judgments obtained by the United States. To the contrary, all of the case law we have located states that no such statute of limitations existed. See United States v. Weintraub, 613 F.2d 612 (1979) (stating "[t]here is no time limit whatsoever on an action against the taxpayer to enforce a timely levy or judgment obtained in a timely filed court proceeding."); Moyer v. Mathis, 458 F.2d 431, 434 (5th Cir. 1972) (foreclosure suit twenty years after timely lien not time-barred); United States v. Overman, 424 F.2d 1142, 1147 (9th Cir. 1970) (foreclosure suit six years after judgment in timely suit not timebarred; tax liens are enforceable at any time); Plisco v. United States, 306 F.2d 784, 786 n. 1 (D.C. Cir. 1962) (\$ 6502 requires only levy or suit within six years of assessment and does not limit means for enforcing assessment); Hector v. United States, 255 F.2d 84 (5th Cir. 1958) (suit filed within six years of assessment tolls limitation period indefinitely); United States v. Ettelson, 159 F.2d 193, 196 (7th Cir. 1947) (claim filed in probate court within six years of assessment sufficient to toll limitation period and judgment could be enforced anytime thereafter; there is no federal statutory provision as to period of limitation on enforcing judgment); Investment & Securities Co. v. United States, 140 F.2d 894, 896 (9th Cir. 1944) (no federal statutory limitation on enforcing judgment in timely suit; tax can be collected at any time); United States v. Mandel, 337 F. Supp. 1274, 1276-77 (S.D. Fla. 1974) (follows Moyer); United States v. American Cas. Co., 238 F. Supp. 36, 38-39 (W.D. Ky. 1964) (follows Ettelson); United States v. Caldwell, 74 F. Supp. 114 (M.D. Tenn. 1947) (no time limit on enforcing lien acquired in timely suit); United States v. First Nat'l Bank, 54 F. Supp. 351 (N.D. Ohio 1943) (same as Ettelson and American Cas. Co.).

Given that the FDCPA does not apply to the lien at issue, that we could not find a statutory period of limitations for liens which are not subject to the FDCPA, and given that the case law seems clear there was no such statute of limitations, we are tempted to advise our client that the collection action at issue is proper. However, we are concerned about advising in this manner and believe the result could be viewed as harsh. We would essentially be advising our client to collect ~~forever~~ until the judgment is paid. We would appreciate your views as to whether we have reached a correct legal conclusion and, if so, whether any policy considerations exist that would warrant the Service foregoing collection of such antiquated judgments as the one herein.

Should you have any questions, please contact the undersigned at 602-207-8059.


ANN M. WELHAF
Acting Associate Area Counsel
(SBSE), Area 5

Attachments